UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/324,967	07/07/2014	John W. Ogilvie	6071.2.3	9460

23484 7590 03/15/2017

John Ogilvie
2148 E. 11270 S.
Sandy, UT 84092

EXAMINER	
MENDIRATTA, VISHU K	

ART UNIT	PAPER NUMBER
3711	

NOTIFICATION DATE	DELIVERY MODE
03/15/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

john@OgilvieLawFirm.com
johnwogilvie@gmail.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN W. OGILVIE and KRISTY L. OGILVIE

Appeal 2015-004728
Application 14/324,967
Technology Center 3700

Before EDWARD A. BROWN, WILLIAM A. CAPP, and ARTHUR M. PESLAK, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John W. Ogilvie and Kristy L. Ogilvie ("Appellants") appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–20.[1] We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

[1] Appellants submit the real party in interest is Smiling Pines LLC. Appeal Br. 1.

THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

> 1. Game modification equipment for modifying how preexisting games are played by modifying aspects of play which are shared by various games, the game modification equipment comprising:
>
> at least one game modification instruction presentation apparatus, said instruction presentation apparatus embodying at least one game modification instruction which is functional to provide a modified game play experience by modifying game play of any of a plurality of games that include an original game or a prior modification of an original game;
>
> wherein the plurality of original games includes a game having a bank, a game having event cards, and a game having play money;
>
> wherein each said original game is also playable in an unmodified form with respective original game equipment which lacks said at least one game modification instruction and which has functionality defined according to original game rules;
>
> wherein the game modification equipment includes a plurality of game modification instructions which modify functionality of the original game equipment of at least one of the original games by adding at least three of the following game play mechanisms which are not present in the unmodified form of the original game:
>
> the bank taking at least one event card out of play;
>
> returning out-of-play event cards back into play;
>
> the bank taking back half of a player's money on the basis of the game modification instruction;
>
> the bank doubling a player's money on the basis of the game modification instruction;
>
> the bank taking back a player's house or hotel on the basis of the game modification instruction;
>
> limiting game play to a final round prior to determination of a winner in the original game;

letting one player take a turn in the original game in place of another player's turn;
doubling a player's dice roll for a turn;
tripling a player's dice roll for a turn;
taking a property card from another player on the basis of the game modification instruction, as opposed to on the basis of a deal or purchase;
giving a property card to another player on the basis of the game modification instruction, as opposed to on the basis of a deal or purchase;
taking at least one extra card from a pile of event cards;
a bankrupted player coming back into the game with startup cash from the bank;
a bankrupted player coming back into the game with a property they choose to take from a non-bankrupted player;
one player gives another player half their money on the basis of the game modification instruction, as opposed to on the basis of a deal or purchase;
one player moving another player to a jail space on a game board;
one player moving another player to a free parking space on a game board;
allowing a player to move to any property the player chooses and then buy it, on the basis of the game modification instruction as opposed to based on a dice roll;
letting one player view and use items of original game equipment of another player for one turn during game play;
letting one player view and use items of original game equipment of another player for one turn during game play without making any deals for the other player;
allowing or prohibiting deal-making between players, according to a game modification instruction card;
during game play returning an item of original game equipment to a location and a status which the item had at the beginning of game play.

REJECTIONS

1) Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.
2) Claims 1–20 are rejected under 35 U.S.C. § 103 as unpatentable over Wilkins (US 5,810,359, issued Sept. 22, 1998).

DISCUSSION

Rejection 1: Claims 1–20: 35 U.S.C. § 101

Appellants argue the rejection of claims 1–20 under 35 U.S.C. § 101 as a group. Appeal Br. 9. We select claim 1 as representative and claims 2–20 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(iv).

The Examiner finds that claim 1 is directed to the abstract idea of rules for playing a board game. Final Act. 3; Ans. 15–16 (providing further analysis for the 35 U.S.C. § 101 rejection stated in the Final Action). The Examiner next finds that "any elements or combination of elements in the claims other than the abstract idea per se amounts to no more than mere instructions to implement the idea on a location structure, [or] game pieces." Ans. 16–17. The Examiner concludes that the claims constitute a patent-ineligible abstract idea because "[v]iewed as a whole any claimed elements of "modification equipment/cards/dice" does not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself. *Id.* at 17.

Appellants contend that the claims are not directed to an abstract idea for three reasons. Reply Br. 1. Particularly, Appellants argue the claims are "limited to *very specific rule modifications*," "limited to modifying game play of any of a *plurality* of games," and "claim 1 is limited to modifying

game play of *only certain games*." *Id.* For the following reasons, Appellants' contentions are not persuasive and we sustain the rejection of claim 1 under 35 U.S.C. § 101.

In order to determine whether a patent claim is drawn to patent-eligible subject matter, we follow the two-step test set forth in *Alice Corp. Party, Ltd. v. CLS Bank International,* 134 S. Ct. 2347, 2350 (2014) and *Mayo Collaborative Servs. v. Prometheus Labs, Inc.,* 566 U.S. 66, 88 (2012). For the first step, "we determine whether the claims at issue are directed to a patent-ineligible concept such as an abstract idea." *In re Smith,* 815 F.3d 816, 818 (Fed. Cir. 2016). Appellants dispute the Examiner's finding that claim 1 is directed to an abstract idea, stating that "there is an abstract idea in this application," but that "[t]he claims are much narrower" than this abstract idea. Reply Br. 1. For the purpose of determining whether claim 1 is directed to an abstract idea, however, we discern no meaningful distinction between modifying rules for a game and rules for playing a board game. Therefore, Appellants do not apprise us of error in the Examiner's finding that claim 1 is directed to the abstract idea of the rules for playing a board game. *See In re Smith,* 815 F.3d at 819 ("claims, describing a set of rules for a game, are drawn to an abstract idea.").

The second step of the *Mayo/Alice* test requires us to determine if claim 1 "contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* The Federal Circuit explained that it "could envisage, for example, claims directed to conducting a game using a new or original deck of cards potentially surviving step two of *Alice*." *Id.*

The structures in claim 1, however, are all conventional existing board game items; namely, for example, "a bank," "event cards," and "play money." Appeal Br. 26–27 (Claims App.). Claim 1 does not recite any specific structure for the "game modification equipment," but merely recites that it "includes a plurality of game modification instructions." *Id.* The "game modification instructions" are conventional uses of conventional game board game items. For example, claim 1 recites that the bank takes "back half of a player's money on the basis of the game modification instruction." *Id.* Appellants' reasons in support of their contention that claim 1 contains patent eligible subject matter are all directed to limitations on the *scope* of claim 1. These reasons fail to direct us to any express claim limitations which either alone, or as part of the claimed ordered combination of limitations, contain an "inventive concept" that transforms the abstract idea of rules for playing a board game into patent eligible subject matter. Reply Br. 1–2. As Appellants have not apprised us of error in the Examiner's analysis for either step of the *Mayo/Alice* test, we sustain the rejection, under 35 U.S.C. § 101, of claim 1. Claims 2–20 fall with claim 1.

Rejection 2: Claims 1–20: 35 U.S.C. § 103(a)

The rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed as stated above. Therefore, we do not reach the rejection of claims 1–20 under 35 U.S.C. § 103(a). 37 C.F.R. § 41.50(a)(1)("The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim.").

DECISION

The Examiner's decision rejecting claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED